

**ATTORNEY GENERAL'S OPEN RECORDS AND MEETINGS OPINION
No. 99-O-09**

DATE ISSUED: November 1, 1999

ISSUED TO: Jeff Sheets, Sioux County State's Attorney

CITIZEN'S REQUEST FOR OPINION

On October 6, 1999,, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Sioux County Commissioner Deb Gullickson asking whether the other two members of the Sioux County Commission and the Sioux County State's Attorney violated N.D.C.C. §§ 44-04-19 and 44-04-20 by holding a meeting without her knowledge and without public notice.

FACTS PRESENTED

The Sioux County Board of County Commissioners held a regular meeting on September 7, 1999. Among the agenda topics was an application for a liquor license. Commissioner Gullickson's opinion request indicates that the state's attorney was present at the meeting but did not offer any advice on the application. After the meeting ended, Commissioner Gullickson left the building, but noticed that the other commissioners stayed behind. Returning to the building, she observed the other two commissioners and the state's attorney having a conversation in the meeting room. In response to an inquiry from this office, State's Attorney Sheets acknowledges that he met with two of the three commissioners without prior public notice on September 7, but states that the discussion did not pertain to county business and was simply a casual, personal conversation.

Commissioner Gullickson claims that she saw Commissioner Larry Silbernagel the next day and that he shared with her the state's attorney's advice on the liquor license application. Commissioner Gullickson surmises that this advice was provided to Commissioner Silbernagel during the informal gathering the night before, for which she did not receive notice. In a subsequent conversation with this office, State's Attorney Sheets assured this office that his advice to Commissioner Silbernagel on the application was given many days later, and repeated his statement that the September 7 discussion did not relate to Commissioner Gullickson or otherwise pertain to county business.

<PAGE NAME="p.O-42">ISSUE

Was the September 7 gathering of a quorum of the Sioux County Board of County Commissioners with the Sioux County State's Attorney a "meeting" required to be open to the public and preceded by public notice.

ANALYSIS

For a gathering of the members of a governing body of a public entity to be a "meeting" for purposes of N.D.C.C. § 44-04-19, the open meetings law, the gathering must pertain to the "public business" of the governing body. N.D.C.C. § 44-04-17.1(8)(a)(1). The term "meeting" does not apply to social gatherings, even if attended by a quorum of the members of a governing body, as long as public business is not considered or discussed. N.D.C.C. § 44-04-17.1(8)(b); 1998 N.D. Op. Att'y Gen. O-27, O-30.

For opinions issued under N.D.C.C. § 44-04-21.1, this office does not resolve disputed facts or weigh the credibility of the requester against the public entity. 1998 N.D. Op. Att'y Gen. O-78. Rather, opinions issued under that section are based on the facts provided by the public entity. N.D.C.C. § 44-04-21.1(2). Furthermore, making a false written statement in a governmental matter is a class A misdemeanor. N.D.C.C. § 12.1-11-02. Accordingly, this office will not question the written assurance of State's Attorney Sheets that the informal gathering following the September 7 regular meeting of the Commission did not pertain to county business. I, therefore, conclude that the conversation was not a "meeting" required to be open to the public under N.D.C.C. § 44-04-19 and preceded by public notice under N.D.C.C. § 44-04-20.

CONCLUSION

The gathering of a quorum of the members of the Sioux County Board of County Commissioners on September 7 was not a "meeting" because public business was not discussed or considered during the gathering.

Heidi Heitkamp

ATTORNEY GENERAL OPEN RECORDS AND MEETINGS OPINION
Sioux County Commission
November 1, 1999
Page 3

ATTORNEY GENERAL

Assisted by: James C. Fleming
Assistant Attorney General